

DOCKET NO. AAN-CV16-6020436-S : SUPERIOR COURT
:
DONNA CIMARELLI-SANCHEZ, : J.D. OF ANSONIA-MILFORD
ADMINISTRATRIX OF THE ESTATE OF :
MAREN VICTORIA SANCHEZ :
:
VS. : AT MILFORD
:
CITY OF MILFORD, ET AL. : FEBRUARY 7, 2019

REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION

Defendants respectfully submit this reply to plaintiff's memorandum in opposition to their motion for reconsideration, dated and filed on February 6, 2019. See Doc. 194.

A. Plaintiff'S Opposition Ignores the Allegations of Her Complaint

Lost at oral argument and ignored in plaintiff's opposition is the fundamental principle that it is the complaint allegations which frame the issues for trial. See Matthews v. F.M.C. Corporation, 190 Conn. 700, 705 (1983) ("It is fundamental in our law that the right of a plaintiff to recover is limited to the allegations of his complaint."); Cavallo v. Derby Savings Bank, 188 Conn. 281, 285-86 (1982) ("Moreover, we cannot look beyond the complaint for facts not alleged.").

Nowhere in plaintiff's opposition does she address the following allegations in her operative complaint:

Maren Sanchez's injuries and death were caused by the negligence of one or more employees of the defendant Board and the defendant City in failing to take **reasonable measures to monitor** Christopher Plaskon's conduct and verify that he was not in possession of a dangerous weapon with which he could harm other students, including

Maren Victoria Sanchez who was an identifiable victim subject to imminent harm at the hands of Christopher Plaskon on April 25, 2014.

Complaint, ¶ 32.

This allegation does not relate to any ministerial provision in the SPIP. Indeed, the concept for which defendants cited Ventura is that this is a purely legal issue, and allegations of purported failures to take reasonable measures - like that specifically alleged by plaintiff in the complaint - pertain to discretionary acts or omissions as a matter of law. See Evon v. Andrews, 211 Conn. 501, 506-507 (1989) (defendants' acts discretionary in nature because what constitutes reasonable, proper or adequate inspection involves exercise of judgment); Violano v. Fernandez, 280 Conn. 310, 323 (2006) ("In the present case, the essence of the plaintiffs' allegations are that Fernandez did not reasonably or adequately secure the property that was under his care, custody and control. These...allegedly negligent acts involved the exercise of judgment.").

Defendants seek and should be entitled to clarification or reconsideration insofar as the issues in this case are framed by the pleadings, and the complaint speaks to discretionary conduct, for which defendants are entitled to governmental immunity from liability. Plaintiff apparently understood this, which is why the foregoing allegations conclude with an express invocation of the

identifiable victim/imminent harm exception to defendants' governmental immunity defense.

B. Plaintiff Has Apparently Misconstrued Defense Counsel's Statements During Oral Argument and Reliance on *Ventura*

Defendants have not "expressly conceded" anything with respect to the nature of the conduct for which plaintiffs seek to hold them liable. The disparity between the complaint allegations, the representations in her summary judgment briefing, and the statements of her counsel at oral argument, have made this a moving target.

The quoted statements of defense counsel in plaintiff's opposition (p. 3, n. 1) referred to specific provisions in the SPIP which are indeed ministerial. Defense counsel made no concession, and defendants now seek to clarify the Court's agreement that, per Ventura¹, other provisions in the SPIP involve actions and determinations that are discretionary as a matter of law. See Ex. H², SPIP § 5.1.1.1 ("The CIT is then responsible for collectively assessing the student's health and mental status and the level of risk or lethality involved"³); id. ("Share relevant data about the student and/or situation"); § 5.1.2 ("...to share all pertinent information"); § 5.1.4 ("The following points should be covered in

¹ Ventura, 330 Conn. at 633 ("[W]hether a municipal rule or regulation imposes a ministerial duty on a municipal official is a question of law for the court.").

² For ease of reference defendants resubmit Exhibit H - the SPIP - herewith.

³ This provision, when read in context of the Policy as a whole, can only apply to situations in which the student in question is in school - no such assessment can be made in instances, like in this case, where the student is not on school grounds. See Ventura, 33 Conn. at 638 (rejecting plaintiff's interpretation of towing policy because it led to an "absurd and unworkable result...").

the meeting with the parent/guardian."); § 5.1.7 ("Upon return to school, the child may be referred to the planning and placement team process.").

Moreover, at no time during argument did defense counsel concede that all of the conduct for which plaintiff might seek to hold defendants liable was ministerial in nature. First, because this is an issue of law not argument: "whether an act or omission is ministerial or discretionary is also a question of law for resolution by the court." Ventura, 330 Conn. at 634. And second, because defendants have maintained and still maintain that, to the extent plaintiff seeks to strap liability on any act, omission or occurrence subsequent to November 11, 2013, the nature of that conduct, as far as ministerial versus discretionary, remains an unanswered question of law to be resolved at trial. And the burden at trial of demonstrating that any specific "act or omission" is subject to one of the ministerial, as opposed to discretionary, provisions of the SPIP will be plaintiff's to bear. That "standard calls for a statute, rule, or ordinance to 'clearly' impose a ministerial standard so as to eliminate the possibility that the municipality waived immunity inadvertently, inconsistently, or ambiguously." Ventura, 170 Conn. App. 388, 407 (2017), aff'd, 330 Conn. 613 (2019).

For the foregoing reasons, defendants maintain their request that the Court reconsider footnote 12 in its memorandum of decision,

insofar as it may prejudice their right to assert the discretionary nature of, and governmental immunity from liability for, any and all acts or omissions which occurred after November 11, 2013 as a matter of law. They further contend that this issue is of such significance as to warrant argument, and thus request that opportunity.

DEFENDANTS, CITY OF MILFORD
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MILFORD

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CERTIFICATION

This is to certify that a copy of the foregoing was served via electronic mail on February 7, 2019 to all counsel of record including:

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EXHIBIT H

EXHIBIT H

**SUICIDE PREVENTION AND INTERVENTION
PROCEDURE (ADM-P5141.5 a-e)**
Milford Public School District

1.0 SCOPE:

- 1.1 This procedure/policy discusses the process for the Milford Board of Education to follow regarding suicide prevention and intervention.

The on-line version of the procedure is official. Therefore, all printed versions are unofficial copies.

2.0 RESPONSIBILITY:

- 2.1 Director of Pupil Personnel
2.2 Building Principal/Designee

3.0 APPROVAL AUTHORITY:

- 3.1 Director of Pupil Personnel

Authorized Signature on File

Signature

Date

4.0 DEFINITIONS:

- 4.1 CIT: Clinical Intervention Team. The CIT consists of: School Principal, School Nurse and at least one of the following: School Psychologist, School Social Worker or School Guidance Counselor.
- 4.2 Suicide Ideation: The capacity of forming thoughts of suicide.
- 4.3 PPS: Pupil Personnel Service
- 4.4 PPT: The interdisciplinary team of educators and parent(s)/guardian(s) that make decisions regarding a child's special education program.

5.0 PROCEDURE:

- 5.1 Response to any suicidal ideation or attempted suicide by a student, whether or not a medical emergency, the following procedure will be undertaken:
- 5.1.1 When students are identified as possibly at risk for suicide, the CIT immediately is contacted. The CIT is then responsible for collectively assessing the student's health and mental status and the level of risk or lethality involved. When a referral is made to the team, team members will immediately confer to:
- 5.1.1.1 Share relevant data about the student and/or situation;
- 5.1.1.2 Develop a preliminary assessment plan; and
- 5.1.1.3 Identify specific responsibilities of team members in the assessment process.
- 5.1.2 A member of the CIT will contact the parent/guardian and the person who identified the student as possibly at risk for suicide as soon as possible to share all pertinent information.
- 5.1.3 If the student remains at the school, under no circumstances should he/she be allowed to be alone or go home alone. The student must be released only to a parent/guardian or other responsible adult.

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- 5.1.4 A staff member will notify the parent/guardian and request that they come to the school immediately. The following points should be covered in the meeting with the parent/guardian:
- 5.1.4.1 The seriousness of the situation.
 - 5.1.4.2 The need for immediate outside professional help.
 - 5.1.4.3 The need for continued monitoring.
 - 5.1.4.4 A request for parent/guardian to sign a "Transfer of Confidential Information Release form (PPS-F012) between the school and the facility to which the student will be taken, the student's therapist and other individuals as appropriate.
 - 5.1.4.5 The parent/guardian will review and sign the "Exit to Release to Parent/Guardian" form (PPS-F010).
 - 5.1.4.6 A member of the CIT will contact parent/guardian immediately regarding what action occurred to date.
- 5.1.5 If reasonable attempts to reach the parent/guardian, or other responsible adult in whose custody the student may be released are not successful, the case will be treated as a medical emergency and arrangements will be made to contact the Milford Police Department.
- 5.1.6 The parent/guardian will meet with administration and members(s) of CIT to discuss intervention strategies and to view and sign the "Re-entry" form (PPS-F011).
- 5.1.7 Upon return to school, the child may be referred to the planning and placement team process.
- 5.1.8 If, as a result of suicidal activity, a need exists for changes in the student's program, the school's planning and placement team will convene and consult with the student's mental health professional, the parent(s)/guardian(s), appropriate outside facility staff members and, if feasible, the student to plan the student's educational program. When necessary, continued supervision will be implemented.
- 5.1.9 In the event of a severe suicidal attempt that impacts the school community, the CIT should be mobilized to assess and meet the psychological and emotional needs of students and staff who may have witnessed or been aware of the attempt.
- 5.1.10 The Suicide Intervention Form (PPS-F008) will be completed by a CIT member and submitted to the Director of Pupil Personnel Services within twenty-four (24) hours.

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- 5.1.11 Failure on the part of the family to take seriously and provide for the safety of the student in case of potential suicide will be considered emotional neglect and reported to the Department of Children and Families. (cf. 5141.4 – Child Abuse and Neglect). In addition, if school staff has reason to believe that the circumstances surrounding the student's contemplation of or attempt at suicide are related to abuse or neglect, the staff member must report the matter as specified under statute and board policy.
- 5.2 If a staff member has become aware of a potentially suicidal student after school hours, he/she should contact administration first to determine the next steps to take including:
 - 5.2.1 Contacting the parent(s)/guardian(s)
 - 5.2.2 Contacting the appropriate administrator
 - 5.2.3 Contacting the police
- 5.3 The staff member shall take steps to ensure that the student in question is not left alone.
- 5.4 Principal will immediately mobilize the CIT members the next school day.
- 5.5 If suicide by a student or staff member occurs, the Superintendent of Schools shall be notified immediately.
 - 5.5.1 Mobilize the Crisis Team
 - 5.5.1.1 All requests for information will be directed to the Superintendent or designee.
 - 5.5.1.2 The building principal with the crisis team staff will plan and implement an Action Plan (PPS-F009). The Director of Pupil Services will be advised of this plan and coordinate resources, if necessary.
 - 5.5.1.3 The Action Plan may include provisions for group discussions as well as individual sessions with students and staff. A student with a history of suicidal ideation or attempts should be provided psychological triage and provided appropriate supports.
 - 5.5.1.4 Following a suicide, the atmosphere in school can be a critical factor in preventing additional suicides. Some students will be affected more than others, and the impact might surface in different ways. Students should be allowed to discuss their feelings of loss without embarrassment but should not be forced to participate in such discussion. Any discussions of a suicide should be tailored to the age, maturity and needs of the student(s) involved.

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6.0 ASSOCIATED DOCUMENTS:

- 6.1 Administrative Policy #5141.5 – Adopted 06/26/90; Regulations a-e approved 8/21/90; 2nd revision approved 7/9/02.
- 6.2 Administrative Policy #5141.4 – Adopted 8/21/90; Revised 6/14/93
- 6.3 Community Resources Information Sheet
- 6.4 Suicide Intervention Form (PPS-F008)
- 6.5 Action Plan Follow-Up Form (PPS-F009)
- 6.6 Exit to Release to Parent/Guardian form (PPS-F010)
- 6.7 Re-entry form (PPS-F011)
- 6.8 CT General Statutes
- 6.9 Transfer of Confidential Information Release form (PPS-F012)

7.0 RECORD RETENTION TABLE:

<u>Identification</u>	<u>Storage</u>	<u>Retention</u>	<u>Disposition</u>	<u>Protection</u>
Suicide Intervention Form (PPS-F008)	PPS Department	6 years after graduation or age 21	Shred	Locked File Cabinet
Action Plan Follow-Up Form (PPS-F009)	PPS Department	6 years after graduation or age 21	Shred	Locked in File Cabinet
Exit to Release to Parent/Guardian form (PPS-F010)	PPS Department	6 years after graduation or age 21	Shred	Locked in File Cabinet
Re-entry form (PPS-F011)	PPS Department	6 years after graduation or age 21	Shred	Locked in File Cabinet
Transfer of Confidential Information Release form (PPS-F012)	PPS Department	6 years after graduation or age 21	Shred	Locked in File Cabinet

8.0 REVISION HISTORY:

<u>Date:</u>	<u>Revision #:</u>	<u>Description of Revision:</u>
02/27/2006	A	Initial Release

*** End of procedure ***